On September 18, our movement was dealt a devastating blow: the loss of Supreme Court Justice Ruth Bader Ginsburg, a longtime ally of LGBTQ rights. Alarm about the future of the Supreme Court is understandable, as our victories there have been incredibly important in our fight for full legal and lived equality. But we must also remember the pivotal role the lower courts play in shaping our lives and liberties.

Take, for instance, Arianna Inurritegui-Lint, a transgender immigrant from Peru living with HIV. She founded Arianna’s Center, a member organization of The TransLatin@ Coalition, which helps trans folks in South Florida and Puerto Rico navigate their healthcare and legal matters. A lawyer by trade in Peru, she faced discrimination at every turn and migrated to the United States, where she resorted to sex work to pay for transition-related health care needs. Such care is expensive and, at the time, generally excluded from health insurance plans, which means she needed to go to informal and medically unlicensed providers.

Then came The Affordable Care Act (Obamacare), under which the Obama administration finalized a rule in 2016 prohibiting discrimination in health care against LGBTQ people. This made it easier for many transgender and gender-nonconforming people to access critical and oftentimes lifesaving care. But in 2020, the Trump administration’s Department of Health and Human Services rolled back the rule, inviting health care providers to discriminate against LGBTQ folks. On behalf of D.C.’s Whitman-Walker Health and The TransLatin@ Coalition, as well as a number of other LGBTQ organizations and providers, Lambda Legal sued.

The case is before one of the 94 federal district courts where so many crucial issues, including those of life-and-death interest to LGBTQ people,
are ruled on before they may bubble up to the 13 circuit appeals courts and, possibly, “the Su-
premes.”

THE ASSAULT ON FEDERAL COURTS
Within hours of the news of Justice Ginsburg’s
death, Senate Majority Leader Mitch McConnell
gloated that he would bring President Trump’s pick
for that seat—his third Supreme Court nomina-
tion—to the floor for a vote. This should come as no
surprise, as over the past three and a half years, the
Trump administration has packed the lower courts—
and Mitch McConnell’s GOP-led Senate have ushered
through—a truly frightening number of extremist
judges, many of whom have records displaying their
anti-LGBTQ bias. In late July, the Senate confirmed
Trump’s 200th judicial appointment.

Now, over 30 percent of the seats on the influ-
ential circuit courts of appeals are held by Trump’s
hand-picked conservatives, most of them groomed
for such seats within the ultra-conservative Feder-
alist Society. Their average age at time of appoint-
ment was 48—considerably younger than judges
confirmed by previous administrations—meaning
that, with their lifetime terms—which could extend, in
some cases, into the 2050’s—they have an outsized
influence on the courts that will be felt for decades,
long after Trump is gone.

“This quiet but vicious assault on our judiciary is
the most far-reaching and long-lasting of any attack
this Administration has leveled against the LGBTQ
community,” says Kylee Reynolds, Lambda Legal
Fair Courts Project Fellow. “Never before has the
need been so urgent to vote for politicians commit-
ted to confirming fair-minded judicial nominees.”

In this last newsletter before the November elec-
tions, we have one do-or-die message: You must vote
in November, not only in the presidential race but in
Senate races, especially in tightly contested swing
states or one with a competitive Senate race. (Arizo-
na, Florida, Georgia, Kansas, Kentucky, Maine, Michi-
gan, Nevada, North Carolina, Ohio, Pennsylvania, and
Wisconsin...we’re especially talking to you!)

And now, with a Supreme Court seat hanging in the
balance, the stakes have never been higher.

TRANSFORMING THE JUDICIARY WITH
DEVASTATING SPEED
The Trump Administration is often called bumbling
and incompetent—but when it comes to fulfilling his
judicial promises to the base that elected him, Trump
has actually moved with alarming swiftness and effi-
ciency. President Obama confirmed 55 circuit court
picks over his eight years in office. Trump installed
53 in less than half that time. In fact, the Trump
Administration is installing circuit court judges at
nearly twice the speed of each of the last five presi-
dential administrations.

Senate Republicans have been complicit in this
swiftness. Last year, they did away with a Senate
rule that allowed for 30 hours of debate on a district
court judicial nominee. Now, Senators have just two
hours to debate a lifetime appointment. This
degrades the integrity of the advice and consent
process, especially considering how frequently
Trump’s nominees have failed to disclose important
aspects of their records, such as controversial and
inflammatory personal writings.
MANY NOMINEES HAVE ANTI-LGBTQ RECORDS
One in three of Trump’s circuit court nominees had a demonstrated history of opposing LGBTQ equality. Lambda Legal has opposed 22 of the 53 circuit court nominees due to their anti-LGBTQ views, chosen in the last three years by the Trump administration. Many of them have been funneled in from conservative organizations.

Anti-LGBTQ Trump judges include Fifth Circuit judge Stuart Kyle Duncan, who argued that transgender people are “delusional,” and Lawrence Van Dyke (U.S. Court of Appeals for the Ninth Circuit) whose views prompted the American Bar Association (ABA) to question “whether Mr. VanDyke would be fair to persons who are gay, lesbian, or otherwise part of the LGBTQ community.”

Eighth Circuit judge L. Steven Grasz was unanimously rated “not qualified” by the American Bar Association (ABA) committee, on the grounds that he would be unable to put the law before his personal beliefs, particularly regarding transgender people. Grasz also served on the board of a Nebraska group that was pro-conversion therapy and anti-marriage equality.

UNQUALIFIED, 80% MALE, NEARLY ALL WHITE
The only circuit court judges to be confirmed in the last 30 years with a “not qualified” rating from the American Bar Association (ABA) are all Trump appointments. In addition to Grasz, Trump nominees Jonathan Kobes (8th Circuit Court of Appeals) and VanDyke received this shameful rating.

Of Kobes, the ABA said that “his career path has not resulted in sufficient evidence of a developed ability to do the written work of a United States Circuit Court judge” and questioned his understanding of “complex legal analysis” and “knowledge of the law.”

Of VanDyke, the ABA’s letter said that judges and lawyers interviewed about him called him “arrogant,” “lazy” and “an ideologue” who possesses an “entitlement temperament.”

For our court system to be respected and seen as fully legitimate, its judges must reflect the diversity of the U.S. Yet 85 percent of Trump circuit court nominees are white (in a country that is only 60 percent white and non-Latinx) and almost 80 percent are men. None of the Trump nominees are Black and only one is Latinx.

PLEASE VOTE IN NOVEMBER
Come January 2021, who the president is and who controls the Senate will define whether the stacking of the courts with anti-LGBTQ ideologues continues for at least another two years, when the next round of Senate elections will take place. Many of the recent attacks we’ve seen—on everything from immigration and deregulation to health care and LGBTQ protections—have thus far been blocked by federal courts, but it won’t stay that way if more bad judges come onto the courts.

The time to act is upon us.

EXTREMISTS ON THE BENCH
Some of the anti-LGBTQ judges appointed and confirmed to federal courts recently include

- **KYLE DUNCAN** (U.S. Court of Appeals for the Fifth Circuit) has claimed being transgender is a “delusion” and has defended businesses that assert a religious right to refuse to serve same-sex couples.

- **STEVEN GRASZ** (U.S. Court of Appeals for the Eighth Circuit) was rated “not qualified” by the American Bar Association on the grounds that he would be unable to set aside his views about transgender people.

- **LAWRENCE VANDYKE** (U.S. Court of Appeals for the Ninth Circuit) has asserted that the freedom to marry for same-sex couples hurts families, children and society.
Transgender, Gender-Nonconforming & Non-Binary Voters:

YOUR VOTE MATTERS

To learn what you need to know to register and vote, visit lambdalegal.org/vote

GIVING TO LAMBDA LEGAL GIVES LGBTQ KIDS A CHANCE AT THE HAPPINESS WE HAVE

Help ensure that the rights we have won are enforced and defended for generations to come. When you establish a legacy with Lambda Legal through your will, retirement account, life insurance or trust, you help safeguard our community’s future.

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